

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

EMMANUEL ROY,

Defendant.

- - - - - X

S3 09 Cr. 940 (TPG)

GOVERNMENT'S PROPOSED EXAMINATION
OF PROSPECTIVE JURORS

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The Government respectfully requests, pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure, that the Court include the following questions in its examination of prospective jurors.

The Court is requested to pursue more detailed questioning if a particular juror's answer reveals that further inquiry is appropriate and, in such an instance, to conclude with an inquiry whether the particular fact or circumstance would influence the juror in favor of or against either the Government or the defendant, or otherwise affect the juror's ability to serve as a fair and impartial juror in this case.

The Charges

This is a criminal case. The defendant on trial, EMMANUEL ROY, has been charged with the commission of federal crimes in an Indictment filed by a grand jury sitting in this District.

The Indictment is not evidence. It simply contains the charges that the Government is required to prove to the satisfaction of the trial jury beyond a reasonable doubt. I will summarize the charges in this case in order to determine whether there is anything about the nature of this case that may make it difficult or inappropriate for any of you to serve on the jury.

This is a criminal case alleging five counts or crimes. All five of the counts allege fraud relating to various home mortgage applications submitted to banks. Count One alleges that the defendant, EMMANUEL ROY, was involved in a conspiracy to commit wire fraud by recruiting people to submit loan applications to banks that contained materially false information about these people's qualifications for the loans. Count Two relates to a particular property and a particular person who ROY allegedly recruited to take out a fraudulent mortgage as part of this alleged conspiracy. Counts Three and Four also each relate to a particular alleged recruit and a particular property.

Count Five charges a separate conspiracy to commit bank fraud and wire fraud. That count charges that ROY, in his

capacity as a lawyer for people selling homes, made false statements to banks.

1. Does any juror have any personal knowledge of the charge in the Indictment as I have described it?

Ability to Sit as Jurors

2. Does any juror have a problem with his or her hearing or vision, or any other medical problem, which would prevent him or her from giving full attention to all of the evidence at this trial? Is any juror taking any medication which would prevent him or her from giving full attention to all the evidence at this trial?

3. Does any juror have any difficulty in reading or understanding English in any degree?

Nature of the Charges

4. As you can tell, during the trial, you will hear evidence concerning mortgage fraud, bank fraud, and wire fraud. Does the fact that the charges involve mortgage fraud, bank fraud, and wire fraud make it difficult for any of you to render a fair verdict? Do any of you feel that you could not decide fairly and impartially a case involving such charges?

5. Has any juror been involved in an offense involving mortgage fraud, bank fraud, and wire fraud? Has any juror ever been a victim of mortgage or bank fraud? Has any juror's relative, close friend or associate been involved in an

offense involving mortgage or bank fraud? Has any juror, or any member of the juror's family, or any juror's close friend, had any experiences of any kind, directly or indirectly, with mortgage or bank fraud?

6. Do any of you feel, for any reason, that you could not view fairly and impartially a case involving mortgage or bank fraud?

7. Has any juror worked in any job involving direct contact with mortgage lending, banking, or real estate? If so, in what capacity?

8. Does any juror have a relative, close friend or associate who works in direct contact with mortgage lending, banking, or real estate?

9. Does any juror believe that banks or mortgage lenders, or their senior executives, are responsible for the decline in the real estate market?

10. Does any juror have strong feelings about the role banks or mortgage lenders play in deciding whether or not to issue mortgages?

11. Does any juror believe that it should not be a crime for a person to submit inaccurate information in order to obtain a home mortgage loan?

12. Has any juror (or any family member, associate or close friend) ever had a property enter foreclosure?

13. Has any juror (or any family member, associate or close friend) ever participated in a real estate transaction in which the property was purchased in the name of someone other than the person who intended to live in the property? [The Government respectfully requests that if a prospective juror responds affirmatively, that further voir dire be conducted of the juror at the side bar.]

14. Has any juror ever applied to a bank for a mortgage loan? If so, is there anything about that experience that would affect his or her ability to be a fair and impartial juror in this case?

15. Has any juror had any negative experiences with a bank, mortgage lender, or other loan institution, which would affect his or her ability to be a fair and impartial juror in this case?

Views on Certain Witnesses and Types of Evidence

16. The witnesses in this case may include law enforcement officers from the Federal Bureau of Investigation (the "FBI") and possibly other law enforcement agencies. Would any of you be more likely to believe a witness merely because he or she is a member of the FBI or other law enforcement or government agency? Would any of you be less likely to believe a witness merely because he or she is a member of a law enforcement or other government agency?

17. You will hear testimony by and about the use of cooperating witnesses in this case; that is, you will hear testimony from individuals who were involved in criminal conduct, and who subsequently pleaded guilty to their criminal conduct pursuant to what is called a "cooperation agreement" with the Government. I advise you that the use of cooperating witnesses is a legal and often necessary law enforcement tool. Do you have any general feeling about the Government's use of cooperating witnesses that would make it difficult for you to render a wholly fair and impartial verdict? Would you have any bias for or against the Government because of evidence obtained in this manner?

Knowledge of the Trial Participants

18. The defendant in this case is EMMANUEL ROY.
[Please ask the defendant to rise.] Does any juror know, or has any juror had, any dealings, directly or indirectly, with the defendant EMMANUEL ROY, or with any relative, friend or associate of the defendant?

19. To your knowledge, do any of your relatives, friends, associates, or employers know the defendant?

20. The defendant, EMMANUEL ROY, is represented by Raymond Sussman and Victoria Brown-Douglas. [Please ask Mr. Sussman and Ms. Brown-Douglas to stand.] Do any of you know Mr. Sussman or Ms. Brown-Douglas? Has any juror had any dealings

with either of them?

21. The Government is represented here, as in all cases where it is a party before this Court, by the United States Attorney for the Southern District of New York, Preet Bharara. The conduct of the trial will be in the immediate charge of Assistant United States Attorneys Robert Boone and Alvin Bragg. They will be assisted by Special Agent Thomas D'Amico of the FBI, and Grace Awabdeh, a paralegal specialist in the U.S. Attorney's Office. [Please ask them to stand.] Do any of you know Mr. Bharara, Mr. Boone, Mr. Bragg, Mr. D'Amico, or Ms. Awabdeh? To your knowledge, have you, your family members, or your close friends had any dealings with them?

22. I will now read a list of names of individuals or entities that may be mentioned during the trial, or individuals who may be witnesses in this case: (a) Ade Agbayewa; (b) All Island Mortgage; (c) Almonte & Bratkovsky; (d) Keith Anthony; (e) Georges Casimir; (f) Coral Mortgage; (g) Patrick Coulton; (h) Kim Davis; (i) Velma Davis; (j) Kurt Dirker; (k) Fidelis Abstract; (l) Fidelis Development; (m) Jean Robert Geffrard (n) Constantine Giannakos; (o) Joshua Funding; (p) Darrin Kibel; (q) Gabriela Krafcikova; (r) Marie Martial; (s) Doris Meyer; (t) Beverly Middleton; (u) Rebecca Roy (or Rebecca Newlin); (v) Daniel Shulfsman; (w) James Scully; (x) Harold Smith; and (y) Ignace Gary Sylvain. Do any of you know any of these people

or entities? Have you had any dealings, directly or indirectly, with any of them? To your knowledge, have any of your relatives, friends, or associates had any dealings with them?

23. I will now read a list of locations that may be mentioned or shown during the trial: (a) 1047A Herkimer Street, Brooklyn, New York; (b) 317 Van Siclen Avenue, Brooklyn, New York; (c) 236 Palmetto Street, Brooklyn, New York; (d) 377 Quincy Street, Brooklyn, New York; (e) 40 Monroe Street, Brooklyn, New York; (f) 106 Snediker Avenue, Brooklyn, New York; (g) 1038 Dekalb Avenue, Brooklyn, New York; (h) 285 North Fifth Street, Newark, New Jersey; (i) 291 Cornelia Street, Brooklyn, New York; (j) 163 Taaffe Place, Unit 4, Brooklyn, New York; (k) 248 Eastwood Avenue, Deer Park, New York; (l) 2205 Light Street, Bronx, New York; (m) 1467 Rosedale Avenue, Bronx, New York; (n) 238 MacDonough Street, Brooklyn, New York; (o) 40 Law Street, Valley Stream, NY; (p) 535 County Line Road, Amityville, New York; (q) 1668 North Gardiner, Bay Shore, New York; (r) 164 Urban Avenue, Westbury, New York; (s) 238 MacDonough Street, Brooklyn, New York; (t) 1542 Bergen Street, Brooklyn, New York; and (u) 3220 Snyder Avenue, Brooklyn. Do any of you live or work at or near any of these locations or have close friends or family who do?

Relationship With Government

24. Does any juror, or his or her relatives or close

friends, work in law, law enforcement, the justice system, or the courts? In what capacity? Has any juror had any contact with anyone in law, law enforcement, the justice system or the courts that might influence your ability to evaluate this case?

25. Does any juror know, or have any association -- professional, business, or social, direct or indirect -- with any member of the staff of the United States Attorney's Office for the Southern District of New York?

26. Does any juror know, or have any association -- professional, business, or social, direct or indirect -- with the FBI?

27. Does any juror know, or have any association -- professional, business, or social, direct or indirect -- with the New York State Department of Financial Services?

28. Have you, or has any member of your family, either as an individual or in the course of his or her business, ever been a party to any legal action or dispute with the United States or any of the departments, agencies, or employees of the United States, including the Internal Revenue Service? Have you had any legal, financial, or other interest in the outcome of such a dispute? Have you, or has any member of your family, ever had such a dispute concerning money owed to you by the Government or owed by you to the Government?

29. Has any juror, either through any experience he or

she has had or anything he or she has seen or read, developed any bias or prejudice or other feelings for or against the United States Department of Justice, the United States Attorney's Office for the Southern District of New York, the Federal Bureau of Investigation, or the New York State Department of Financial Services?

Prior Jury Service

30. Have you ever served as a juror in a trial in any court? If so, in what court did you serve and was it a civil or criminal case? What type of case was it? Without telling us what the verdict was, did the jury reach a verdict?

31. Have you ever at any time served as a member of a grand jury, whether in federal, state, county or city court? If so, when and where?

Experience as a Witness, Defendant, or Crime Victim

32. Have any of you, or your relatives or close friends, ever been involved or appeared as a witness in any investigation by a federal or state grand jury, or by a Congressional or state legislative committee, licensing authority, or governmental agency? Have you or anyone close to you been questioned in any matter by a law enforcement agency?

33. Have you or has a relative or close friend ever been a witness or a complainant in any hearing or trial?

34. Are you or any member of your family now under subpoena, or to your knowledge, about to be subpoenaed in any case?

35. Have you, any member of your family, or close friend ever been charged with a crime? [As to any prospective juror who answers affirmatively, the Court is respectfully requested to inquire into the circumstances of each crime.]

36. Has any juror, or any of your relatives or close friends, ever been a victim of a crime? [As to any prospective juror who answers affirmatively, the Court is respectfully requested to inquire into the circumstances of each crime.]

37. Has any juror, or any of your relatives or close friends, ever been the subject of any investigation or accusation by any federal or state grand jury, or by a Congressional committee?

Function of the Court and Jury

38. The function of the jury is to decide questions of fact. You are the sole judges of the facts and nothing that the Court or the lawyers say or do may encroach in any way on your role as the exclusive fact finders. However, when it comes to the law, you must take your instructions from the Court and you are bound by those instructions. You may not substitute your notions of what the law is or what you think it should be. At the conclusion of the case, your job will be to determine whether

or not the defendant is guilty as charged in the Indictment. Does any juror have any difficulty with that principle, or any problem in accepting and following the instructions of the law that I will give you in this case?

39. Will each juror accept the proposition that the question of punishment is for the Court alone to decide, and that the possible punishment must not enter into the deliberation of the jurors as to whether the defendant on trial here is guilty?

40. Will each of you accept the proposition that sympathy or empathy must not enter into the deliberations of the jurors as to whether the defendant is guilty or not guilty, and that only the evidence presented here in Court may be used by you to determine whether the defendant is guilty or not guilty of the crime charged?

41. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Is there any juror who feels that even if the evidence established a defendant's guilt beyond a reasonable doubt, he or she might not be able to render a guilty verdict for reasons unrelated to the law and the evidence?

42. Does any juror have any religious, philosophical or other belief which would make him or her unable to sit in judgment of another or unable to render a guilty verdict for reasons unrelated to the law and the evidence?

Other Biases

43. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, does any juror have the slightest doubt in his or her mind, for any reason whatsoever, that he or she will be able to serve conscientiously, fairly, and impartially in this case and to render a true and just verdict without fear, favor, sympathy, or prejudice, and according to the law as it will be explained?

Trial Schedule

44. After the jury is selected, we will begin opening statements and then the presentation of evidence. The trial in this case should last approximately one week. The Court expects that the court day will last from about [_____]. Is there any juror for whom the proposed trial schedule presents an insurmountable problem, one that would make it truly impossible for the juror to serve?

Jurors' Background

45. The Government respectfully requests that the Court ask each juror to state the following information:

- (a) the juror's age;
- (b) where the juror was born;
- (c) the educational background of the juror, including the highest degree obtained;
- (d) whether the juror has served in the military;

- (e) the juror's occupation;
- (f) the nature of the juror's work;
- (g) the length of employment with his or her most recent employer;
- (h) the same employment information with respect to the juror's significant other and any working children;
- (i) the juror's current borough or town of residence;
- (j) whether the juror owns or rents his or her home;
- (k) the length of time at that residence;
- (l) the newspapers or magazines that the juror typically reads and how often;
- (m) the television shows that the juror typically watches; and
- (n) the juror's hobbies or leisure-time activities and organizations.

Requested Instruction Following Impaneling of the Jury

46. From this point on until you retire to deliberate on your verdict, it is your duty not to discuss this case and not to remain in the presence of other persons who may be discussing this case. This rule about not discussing the case with others includes discussions even with members of your own family and your friends.

47. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should

immediately report such an attempt to me through my deputy clerk. In this regard, let me explain to you that the attorneys and the defendant in a case are not supposed to talk to jurors, even to offer a friendly greeting. So if you happen to see any of them outside this courtroom they will, and should, ignore you. Please do not take offense. They will only be acting properly by doing so.

Dated: New York, New York
January 19, 2013

Respectfully submitted,

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By: 

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